EXHIBIT D – SCOPE OF WORK

1 **Briggs Data Submittal Period**
A detailed file review and reconciliation of Briggs' and the Department of Ecology's (Ecology) files will occur and Briggs will submit to the Department (Ecology) any environmental data collected to date that is not already on file at the Southwest Regional Office. Ecology will identify any data gaps not addressed in previous environmental studies and notify Briggs of findings.

2 **Draft Remedial Investigation Work Plan**
A draft Remedial Investigation (RI) Work Plan will be submitted by Briggs and will address such data gaps identified by Ecology, as necessary, to better characterize the extent, distribution and sources of hazardous substances detected at the Site.

The RI performed on the Site will be conducted in a phased approach, including but not limited to Phase I (outlying areas west of Henderson Blvd.), Phase II (interior areas west of Henderson Blvd.) and Phase III (areas located east of Henderson Blvd.). A draft RI work plan will be presented to Ecology for comment and approval prior to implementation of each phase of work. At the completion of each phase of work, a detailed RI Report shall be presented to Ecology for comment and approval. Each phase work plan shall include a schedule for implementing the associated work.

3 **Final Remedial Investigation Work Plans**
Briggs shall submit final RI Work Plans, for Ecology's approval, addressing Ecology's comments on the draft work plans.

4 **Implement the Approved Remedial Investigation Phases**
Briggs will implement the RI phases according to the approved Final RI Work Plan(s).

5 **Draft Remedial Investigation Reports**
Briggs will submit draft RI Reports regarding the implementation and results of the RI phases for Ecology's review.

6 **Final Remedial Investigation Reports**
Briggs will submit final RI reports, for Ecology's approval, addressing Ecology's comments on the draft reports.

7 **Risk Assessments**
Using data collected during and prior to the RI phases, a Risk Assessment (RA) will be performed to evaluate risk to human and ecological receptors.

Briggs will submit a draft RA Report for each phase of the RI, regarding the implementation and results of the RA analysis, for Ecology's review.

Briggs will submit a final RA Report for each phase of the RI, addressing Ecology's comments on the draft report.

8 **Draft Feasibility Study Reports**

Using data collected in previous environmental studies as well as the RI phases, Briggs will perform a Feasilbility Study to develop and evaluate cleanup action alternatives for each phase that is determined by Ecology to require further remedial action under WAC 173-340. The draft Feasibility Study Report(s) will be developed according to standards in WAC 173-340-350, and will be submitted to Ecology for comment and approval.

The cleanup remedies evaluated shall protect human health and the environment, including terrestrial and aquatic receptors identified in the Risk Assessment. Cleanup remedies shall eliminate, reduce, or otherwise control risks posed through each exposure pathway and migration route. Residual threats that accompany each alternative shall be eevaluated to determine if remedies protective of human healther are also protective of ecological receptors. The feasibility studies shall include at least one permanent cleanup alternative to serve as a baseline against which other alternatives shall be evaluated.

9 **Final Feasibility Study Reports**

Briggs will submit final Feasibility Study reports, for Ecology's approval, addressing Ecology's comments on the draft reports.

10 **SCHEDULE** **TO BE DETERMINED BASED ON CLOSURE AND DEMOLITION ACTIVITIES**

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July 14, 2004

Lisa Pearson
Environmental Engineer
Toxics Cleanup Program
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775

Re: Exhibit E, as Amended by City Comments

Dear Lisa:

I propose that this letter form the proposed Exhibit E to the Agreed Order. Actions taken in accordance with agreed orders under the Model Toxics Control Act are exempt from local and agency permitting requirements, but the agency must identify and integrate local and agency "substantive" requirements into the approved work plan and any required remediation to the extent feasible with appropriate clean up.

Jurisdictionally we are located in the City of Olympia. For purposes of the Agreed Order, several City Code sections seem to be appropriate:

1. Shoreline master program for the Thurston Region covers the shoreline of Ward Lake (a Rural designation) and lands 200 feet from the line of ordinary high water on the Briggs site.

a. Normally a substantial development permit is required for all work in excess of $5,000 within the shoreline area. Permits are not required for model toxics work, but all work must comply with the substantive requirements of the code.

b. Work anticipated in the shoreline includes drilling one or more test wells from the top of the bank to the water table. The City has no specific requirements for wells in the shoreline area, except that the wells must meet WDOE standards for monitoring well construction, operation, and closure.

c. Additional work in the shoreline requires sampling and testing. The City has no specific standards for sampling and testing, except the admonition to disturb as little area as necessary to complete the tests and to restore any test area to assure that no runoff or turbidity would reach the lake.

d. A final work element in the shoreline may involve the excavation and removal of material within 200 feet of the shoreline if a clean up action were required and removal of material was required. In such event, again, the City has no specific criteria in the shoreline program. Contaminated spoils would have to be removed, and clean soils disposed on site in a manner that does not cause a fill in the lake to create new land, nor result in any turbidity reaching the lake.

2. Critical area codes: The City critical area ordinance addresses natural steep slopes and wetlands that are found on the Briggs site. Allowed uses are identified at OMC 14.10.303, Table 14.10.303.

a. Site investigation is permitted in all critical areas and special conditions are "none." OMC 14.10.339(B)(50).

b. The City has no "standard" for non destructive testing, except the general admonition to disturb as little of the critical area or buffer as necessary to do the testing and restore the site when testing is complete as necessary to preserve functions and values.

c. If some form of excavation and grading is required, the City standards require:

i. Characterization of the critical area as part of the larger site.

ii. Assess the impact on the critical area, both from activities outside the critical area and from proposed activities within the critical area.

iii. Propose adequate protection mechanisms for the specific critical area.

Full details at OMC 14.10.306.

d. The only specific substantive prohibition applicable to the clean up investigation potentially applicable is that fill in Class II wetlands and associated buffers is prohibited "unless it is demonstrated that the impact is unavoidable and necessary and the project is in the public interest." OMC 14.10.339(B)(23).

e. Any grading or filling of the site as a result of required remediation would be subject to the grading requirements of the City, which do incorporate the substantive requirements of the Drainage Design and Erosion Control Manual for the Thurston Region. (1990), as amended. OMC 14.10.525.

Any substantive work within Ward Lake would be subject to HPA requirements.

The HPA process recognizes the model toxics preemption, RCW 77.55.035. The substantive requirement is found in RCW 70.55.090, which cross references RCW 90.74.020, which provides any work shall require:

> . . . equal or better biological functions and values, compared to the existing conditions, for the target resources or species . . .

RCW 90.74.020(3).

The City of Olympia has clarified the City requirements by memo dated July 13, 2004, the substance of which is as follows:

#1. Shoreline Master Program for Thurston Region

- Test Wells. A test well would fit into the category of "Research and Education," and would be allowed. Impacts should be minimized.

- Excavation and removal of material. The policies of "Mining and Drilling" apply; e.g. excavation should not "substantially alter or cause irreparable damage to normal geohydraulic processes, channel form and alignment, and meandering patterns of adjacent and nearby water bodies..."; accessory equipment and materials should be stored and sited landward from the ordinary high-water mark; operations should protect the receiving waters from degradation; and a report is required.

- Deposit clean soils in excavated area. The "Mining and Drilling" section also has policies for restoring disturbed areas, including restoration to a biologically productive or useful condition which is compatible with existing land, shoreline, and water uses. (See Section Three X.B.17 and 18.)

#2. Critical Areas Ordinance

- Site Investigation. This is permitted in steep slopes and Type II Wetland buffers with an administrative review.

- Monitoring wells. These are permitted in steep slopes and Type II Wetland buffers with an administrative review.

- Soil Removal (similar to mineral extraction). This is allowed under a conditional use permit on steep slopes, but not allowed in a Type II Wetland or its buffer.

- Soil Replacement. Restoration/revegetation is allowed on steep slopes and in Type II Wetlands and their buffers.

One final issue is that steep slopes have a fifty-foot buffer of existing vegetation at the top and toe of the slope. This buffer can be reduced to twenty-five feet after review and approval of a special report.

Taking the CAO as a whole:

> No soil removal allowed in a Type II Wetland or its buffer; this may not even materialize, but if contaminated soils are found in the wetland or its buffer, then a decision will have to be made whether containment will suffice, or if there is some other solution; and,
>
> Steep slope buffer at top and toe of slope, which might cause difficulty in maneuvering on the slope and in extracting any contaminated soils. If the latter is an issue, careful removal of the soils and restoration and revegetation would be the preferred "least impact" choice.

I am not aware of any other permits that might be required for the investigation or remediation of the site. Should additional requirements be identified through the duration of the Agree Order, such substantive requirements may be added to this exhibit.

Very truly yours,

Alexander W. Mackie

AWM:kr
cc: Susan Messegee
Gary Briggs
Kathy Brunson
Kevin Freeman
Cathie Carlson